

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
2 DISTRICT OF CALIFORNIA:**

3

4 **PLEASE TAKE NOTICE** that Defendant KELLOGG USA, INC. ("Defendant"), by and
5 through its undersigned counsel, hereby removes the above-entitled action currently pending in the
6 Superior Court of the State of California in and for the County of Santa Clara (the "State Court")
7 to the United States District Court for the Northern District of California on the ground that this
8 Court has original jurisdiction over this civil action pursuant to 28 U.S.C. §§ 1332, 1441 and 1446.
9 In support of its Notice of Removal, Defendant avers as follows:

10

11 **STATE COURT ACTION**

12

13 1. Plaintiff Angelina Sanchez ("Plaintiff") filed a Complaint against Defendant in the
14 State Court on July 14, 2008 styled as Angelina Sanchez v. Kellogg USA, Inc., Case No.
15 108CV117192 (the "State Court Action"), a true and correct copy of which is attached hereto as
16 Exhibit A.

17

18 2. On August 12, 2008, Defendant's registered agent for service of process was served
19 with a copy of the Complaint and the following documents from the State Court Action, a true and
20 correct copy of each of which is attached hereto as the Exhibits identified below:

21

22 Exhibit B: Summons

23 Exhibit C: Civil Lawsuit Notice

24 Exhibit D: Superior Court of California Alternative Dispute
25 Resolution Information Sheet/Civil Division

26 Exhibit E: Civil Case Cover sheet

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1 3. Defendant is informed and believes that there has been no service of process upon
2 Defendants Does 1 through 20, which are fictitious defendants who have not been served, and thus
3 are to be disregarded for the purposes of this removal. 28 U.S.C. § 1441(a).

5 4. Defendant is informed and believes that the aforementioned documents and
6 exhibits constitute all of the process, pleadings, and orders on file in the State Court Action.

8 5. The basis for removal to federal court is diversity jurisdiction pursuant to 28 U.S.C.
9 § 1332, because: (1) there is complete diversity of citizenship between Plaintiff and Defendant,
0 and (2) the amount in controversy exceeds \$75,000, exclusive of interest and costs.

2 6. In accordance with 28 U.S.C. § 1446(d), Defendant has given contemporaneous
3 written notice of this Notice of Removal to all adverse parties and the Clerk of the Superior Court
4 for the County of Santa Clara.

6 7. As required by 28 U.S.C. § 1441, Defendant seeks to remove this case to the
7 United States District Court for the Northern District of California which is the District Court
8 embracing the place where the State Court Action has been filed.

DIVERSITY OF CITIZENSHIP

2 8. Plaintiff is a citizen of the State of California. See, e.g., Complaint (Ex. A), ¶ 5.

4 9. As shown in the records of the Secretary of State of the State of California,
5 Defendant is a Michigan corporation with its corporate headquarters and principal place of
6 business in Battle Creek, Michigan. Therefore, Defendant is a citizen of the State of Michigan.

1 10. Accordingly, complete diversity of citizenship existed between Plaintiff and
2 Defendant at the time Plaintiff's Complaint was filed, and complete diversity of citizenship exists
3 at the time of removal.

5 11. Venue lies in this Court because Plaintiff's action is pending in this district and
6 division. See 28 U.S.C. § 1441(a).

AMOUNT IN CONTROVERSY

10 12. Plaintiff does not seek a specific amount of damages in their Complaint. However,
11 a defendant may remove a suit to a federal court notwithstanding the failure of a plaintiff to plead
12 a specific dollar amount in controversy. Where, as here, Plaintiff alleges no specific amount of
13 damages, a removing defendant must prove by a preponderance of the evidence that the amount in
14 controversy exceeds the jurisdictional minimum. See Lowdermilk v. United States Nat'l Assoc.,
15 479 F.3d 994, 998 (9th Cir. 2007); Abrego v. Dow Chemical Co., 443 F.3d 676, 683 (9th Cir.
16 2006). To satisfy the preponderance of the evidence test, a defendant must provide evidence that
17 "it is more likely than not" that the amount in controversy is satisfied. See Sanchez v.
18 Monumental Life Ins. Co., 102 F.3d 398, 404 (9th Cir. 1996). In determining the amount in
19 controversy, the Court may look beyond the complaint to determine whether the amount in
20 controversy is met. See Abrego, supra, 443 F.3d at 690.

13. As a result of the alleged harm or injuries suffered by Plaintiff, her Complaint seeks
unspecified amounts of damages for the following: (1) general, compensatory, special, and
punitive damages; (2) costs and attorneys' fees; (3) prejudgment interest; and (4) such further and
additional relief as the court deems appropriate. See Complaint (Ex. A), ¶¶ 17-19, 25-27, and
Prayer for Relief.

1 14. Plaintiff filed this action as one within the unlimited civil jurisdiction of the State
2 Court. As such, Plaintiff has represented to the State Court that the amount of damages being
3 demanded by her exceeds \$25,000.00. See Civil Case Cover Sheet (Ex. E).

4

5 15. Plaintiff's complaint also alleges that "[o]n or about March 9, 2007, Plaintiff was
6 terminated from her employment with Defendant Kellogg" and that "[a]s a proximate result of the
7 conduct of defendants, Plaintiff has suffered wage and benefit loss, and will continue to suffer
8 future wage and benefit loss." See Complaint (Ex. A), ¶¶ 18, 23, 26. As such, Plaintiff alleges
9 that she has been accruing back pay wage loss damages since March 9, 2007, through and
10 including the present time, a period currently calculated to be approximately 18 months as of the
11 time of removal. At the time of her termination, Plaintiff was a full-time hourly employee earning
12 \$16.39 per hour. Based on a standard full-time schedule of 2,080 hours per year, Plaintiff's
13 **annual** wages were \$34,091.20. Therefore, for a period of **18 months**, Plaintiff's alleged back pay
14 wage loss damages are currently calculated to be at least \$51,136.80. Assuming it takes at least
15 another year for this case to be resolved through trial, it is more likely than not that Plaintiff's
16 demand for back pay wage loss damages will be claimed to be a period of **30 months**, thereby
17 increasing the amount in controversy for these damages to \$85,228.00. See L. Christensen Decl.

18

19 16. Plaintiff's Complaint also alleges that "[a]s a proximate result of the conduct of
20 defendants, Plaintiff has suffered emotional distress and continues, and will continue to suffer
21 emotional distress." See Complaint (Ex. A), ¶¶ 17, 25. Plaintiffs' demands for emotional distress
22 damages in employment discrimination cases such as this one typically equal or exceed their
23 demands for back pay wage loss damages. As such, it is more likely than not that the amount in
24 controversy in this action for such damages is at least \$85,228.00 as well.

25

26 17. Plaintiff's Complaint also seeks an award of punitive damages. See Complaint (Ex.
27 A), ¶¶ 19, 27. Plaintiffs' punitive damages claim should be included in determining the amount in
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1 controversy. Gibson v. Chrysler Corp., 261 F. 3d 927, 945 (9th Cir. 2001) ("It is well established
 2 that punitive damages are part of the amount in controversy in a civil action."); see also Rippee v.
 3 Boston Market Corp., 408 F. Supp. 2d 982, 984 (S.D. Cal. 2005) ("The calculation of the amount
 4 in controversy . . . takes into account claims for "general" damages, "special" damages, punitive
 5 damages if recoverable as a matter of law, and attorneys' fees recoverable by statute or contract.");
 6 Yeroushalmi v. Blockbuster, Inc., 2005 U.S. Dist. LEXIS 39331, *19 (discharging OSC Re:
 7 Remand, stating that in determining amount in controversy, "it is proper to consider the cost of
 8 injunctive relief, ***potential punitive damages***, and attorney's fees.") (Emphasis added.) In State
 9 Farm Mut. Automobile Ins. Co. v. Campbell, 538 U.S. 403, 425 (2003), the United States
 10 Supreme Court said that the longstanding historical practice of setting punitive damages at two,
 11 three, or four times the size of compensatory damages, while "not binding," is "instructive," and
 12 that "[s]ingle-digit multipliers are more likely to comport with due process." Utilizing the
 13 median ratio of 3:1 that State Farm found to be "instructive," it is more likely than not that the
 14 amount in controversy as to potential punitive damages, based on the potential amount in
 15 controversy for Plaintiff's purported claims for back pay wage loss and emotional distress damages
 16 is **\$511,368.00** ($[\$85,228.00 + \$85,228.00] \times 3$).
 17

18 18. Plaintiff's Complaint also demands an award of attorneys' fees, which could only
 19 be awarded in this action pursuant to California's Fair Employment & Housing Act ("FEHA")
 20 based on the allegations of the Complaint. See Complaint (Ex. A), Prayer for Relief. Where
 21 attorneys' fees are authorized by statute, they are appropriately part of the calculation of the
 22 "amount in controversy" for purposes of removal. Kroske v. U.S. Bank Corp., 432 F.3d 976, 980
 23 (9th Cir. 2001); Johnson v. America Online, Inc., 280 F.Supp.2d 1018 (N.D. Cal. 2003). The
 24 Court's own knowledge and experience in ruling on prevailing plaintiffs' motions for attorneys'
 25 fees in sexual harassment and retaliation/wrongful termination litigation such as this should
 26 indicate that it is more likely than not that the Plaintiff will be seeking an attorneys' fees award of
 27 at least **\$75,000.00** if this case is litigated to judgment in a jury trial (which Plaintiff demands in
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1 her complaint at page 5:2). Defendant reasonably estimates at this juncture that its own attorneys'
2 fees to defend this action through a jury trial and post-trial motions will be over \$75,000 based on
3 its own past litigation experience.

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5 19. In sum, because there is complete diversity of citizenship between Plaintiff and
6 Defendant and because Plaintiff seeks damages and attorneys' fees in excess of the \$75,000
7 jurisdictional threshold, Defendant may remove this action pursuant to 28 U.S.C. §§ 1332 and
8 1441(b). This action is one over which the United States District Courts have original jurisdiction
9 by reason of the diversity of citizenship of the parties. Furthermore, this Notice of Removal is
10 timely as it is being filed less than thirty (30) days after Defendant received a copy of Plaintiff's
11 Complaint.

12

13 20. Nothing in this Notice is intended or should be construed as any type of express or
14 implied admission by Defendant of any fact, of the validity or merits of any of Plaintiffs' claims,
15 causes of action, and allegations, or of any liability for the same, all of which is/are hereby
16 expressly denied, or as any type of express or implied waiver or limitation of any of Defendant's
17 rights, claims, remedies, and defenses in connection with this action, all of which are hereby
18 expressly reserved.

19

WHEREFORE, Defendant respectfully requests that the above-captioned action now pending in the State Court be removed to this United States District Court.

22

DATED: August 26, 2008

McGuireWoods LLP

By:

Matthew C. Kane, Esq.
Attorneys for Defendants
KELLOGG USA, INC.

27

28

1 ROBERT DAVID BAKER, INC.
2 Robert David Baker, Esq. (87314)
3 Tim Reed, Esq. (242578)
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5 San Jose, CA 95126
(408) 292-8555

JUL 14 08

6 Attorney for Plaintiff
7 ANGELINA SANCHEZ

J. Cao/Huynh
7/14/08

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF SANTA CLARA

10 ANGELINA SANCHEZ;

CASE NO. 108CV117192

11 Plaintiff,

12 vs.

13 COMPLAINT FOR DAMAGES

KELLOGG USA, INC.; DOES 1-20,

14 Defendants.

- 15 Plaintiff, Angelina Sanchez, alleges:
- 16 1. Defendant KELLOGG USA, INC., (hereinafter referred to as "Kellogg") is a California
17 corporation duly organized and doing business under the laws of the State of California
18 and doing business in the County of Santa Clara, and is a subject to suit under the
19 California Fair Employment and Housing Act, which is codified at Government Code §§
20 12900, *et seq.* (hereinafter FEHA), in that Defendant Kellogg is an employer who
21 regularly employs 1 or more persons according to the meaning given within Government
22 Code § 12926(d);
- 23 2. JUAN DOE, (hereinafter referred to as "DOE") at all times herein alleged, was a resident
24 of the State of California and an employee of Kellogg USA, Inc.;
- 25 3. Plaintiff is ignorant of the true names and capacities of those defendants sued herein as
Does 1-20, and therefore sue these defendants by such fictitious names. Plaintiff will

1 amend this complaint to allege their true names and capacities when ascertained.

2 Plaintiff is informed and believes and thereby alleges that each DOE Defendant is in
3 some manner responsible for the conduct alleged herein;

- 4 4. At all times alleged each of the individual Defendants mentioned herein were the agents
5 and employees of the corporate defendant and, in doing the things herein alleged, were
6 acting within the course and scope of such agency and employment. The actions of the
7 individuals were authorized, approved, and ratified by the corporate defendant;
- 8 5. The unlawful employment practices alleged herein occurred in the County of Santa Clara,
9 State of California and said county is the place Plaintiff would have continued to work
10 had said unlawful practices had not occurred. Injury to Plaintiff occurred in Santa Clara
11 County, California. Plaintiff's employment with Defendant was to have been performed
12 in Santa Clara County, California;
- 13 6. Plaintiff is an adult female;
- 14 7. Plaintiff is a member of a protected group, *i.e.* females, which the FEHA protects against
15 employment discrimination;
- 16 8. At all times alleged herein Plaintiff was an employee of Kellogg;
- 17 9. Plaintiff was hired by Kellogg as a machine operator on or about 2000;
- 18 10. Plaintiff has filed a complaint with the Department of Fair Employment and Housing, and
19 has obtained a right to sue letter;

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21
22 **FIRST CAUSE OF ACTION**
23 **(Sexual Harassment - Hostile Environment)**
24 **(As to All Defendants)**

- 25 11 Plaintiff incorporates those paragraphs 1-10 as if set forth hereinafter in their entirety;

12. On or about February 27, 2007 Juan DOE harassed Plaintiff because of her sex in the form of lewd and inappropriate gestures and comments, specifically including the comment that her wallet was in his pants accompanied by a gesture mimicking masturbation;

13. The conduct of Juan DOE was unwelcome;

14. The conduct of Juan DOE was sufficiently severe and pervasive as to alter the conditions of Plaintiff's employment, and did alter the conditions of Plaintiff's employment and created a hostile and abusive working environment;

15. Immediately after the unwelcome conduct mentioned in paragraph 14, *supra*, Plaintiff informed her immediate supervisor, Wallace Thomas;

16. For the next several days after the conduct mentioned in paragraph 14, *supra*, Juan DOE would smirk and laugh at Plaintiff whenever he saw her;

17. As a proximate result of the conduct of defendants, Plaintiff has suffered severe emotional distress, and will continue to suffer severe emotional distress;

18. As a proximate result of the conduct of defendants, Plaintiff has suffered wage and benefit loss, and will continue to suffer future wage and benefit loss;

19. The conduct of defendants was intentional, willful, malicious, oppressive, fraudulent, despicable and committed with deliberate indifference to the rights and safety of Plaintiff. As such, Plaintiff is entitled to an award of punitive damages;

THEREFORE, PLAINTIFF PRAYS FOR DAMAGES AS SET FORTH

HEREINAFTER.

SECOND CAUSE OF ACTION
(Retaliation)
(As to Kellogg)

20. Plaintiff incorporates those paragraphs 1-19 as if set forth hereinafter in their entirety;

- 1 21. On or about February 23, 2007, Plaintiff reported the conduct of Juan DOE to her
2 supervisor, Wallace Thomas. Mr. Thomas informed Plaintiff that he would immediately
3 inform Human Resources and indicated that he was aware of previous behavior by Juan
4 DOE;
- 5 22. Plaintiff was informed that an investigation would take place;
- 6 23. On or about March 9, 2007, Plaintiff was terminated from her employment with
7 Defendant Kellogg. The reason given for Plaintiff's termination was pretextual;
- 8 24. As a proximate result of Plaintiff's complaint of sexual harassment, Defendant Kellogg
9 retaliated against Plaintiff by terminating her employment;
- 10 25. As a proximate result of the conduct of defendants, Plaintiff has suffered emotional
11 distress and continues, and will continue to suffer severe emotional distress;
- 12 26. As a proximate result of the conduct of defendants, Plaintiff has suffered wage and
13 benefit loss, and will continue to suffer future wage and benefit loss;
- 14 27. The conduct of defendants was intentional, willful, malicious, oppressive, fraudulent,
15 despicable and committed with deliberate indifference to the rights and safety of Plaintiff.
16 As such, Plaintiff is entitled to an award of punitive damages;

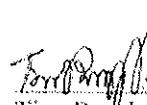
19 THEREFORE, PLAINTIFF PRAYS FOR DAMAGES AS SET FORTH
20
21 HEREINAFTER.

- 23 1. For general and compensatory damages according to proof;
24 2. For special damages according to proof;
25 3. For attorney fees;
1 4. For costs of suit;
2 5. For prejudgment interest;

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6 6 For such other and further relief as this court deems appropriate.
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PLAINTIFF DEMANDS A JURY TRIAL ON ALL CAUSES.

Dated: July 14, 2008


Tim Reed, Esq.
Attorney for Plaintiff

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
KELLOGG, USA, INC., DOES 1-20

SUM-100

POR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

JUL 14 2008

J. Cao-Nguyen

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
ANGELINA SANCHEZ

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es)

SANTA CLARA COUNTY SUPERIOR COURT
191 NORTH FIRST STREETCASE NUMBER
Número del Caso

108 CV 117192

SAN JOSE, CA 95113

SANTA CLARA COUNTY SUPERIOR COURT

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)

TIM REED, ESQ. #242578 408 292-8555 408 292-0703

ROBERT DAVID BAKER, INC.

551 THE ALAMEDA

SAN JOSE, CA 95126 DAVID H YAMASAKI
DATE: JULY 14, 2008 Chief Executive Officer, ClerkClerk, by _____
(Secretario)

J. Cao-Nguyen

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010))

NOTICE TO THE PERSON SERVED: You are served

Served:

1. [] as an individual defendant.
2. [] as the person sued under the fictitious name of (specify):

3. [] on behalf of (specify): *Kellogg USA Inc.*under CCP 416.10 (corporation) CCP 416.20 (defunct corporation) CCP 416.40 (association or partnership) other (specify)4. [] by personal delivery on (date): *8-12-08* CCP 416.60 (minor) CCP 416.70 (conservatee) CCP 416.90 (authorized person)

Page 1 of 1

Code of Civil Procedure §§ 417.20-417.24

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 N. First St., San Jose, CA 95113

CASE NUMBER 108CV117192 ATTACHMENT CV-5012**PLEASE READ THIS ENTIRE FORM**

PLAINTIFF (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANT (The person sued) You must do each of the following to protect your rights:

1. You must file a written response to the *Complaint*, using the proper legal form or format, in the Clerk's Office of the Court, within 30 days of the date you were served with the *Summons* and *Complaint*;
2. You must have an adult other than yourself personally deliver or mail a copy of your written response to Plaintiff's attorney, or to Plaintiff if Plaintiff has no attorney; and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court and the Superior Court of California, County of Santa Clara Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), www.scsselfservice.org, (Select "Civil") or from:

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone - see Local Civil Rule 8

Your Case Management Judge is: Honorable Kevin J. Murphy Department: 22 

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: DEC - 9 2008 Time: 3:00pm in Department: 22

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: _____ Time: _____ in Department: _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET / CIVIL DIVISION**

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

- ≤ **ADR can save time.** A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- ≤ **ADR can save money.** Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- ≤ **ADR provides more participation.** Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- ≤ **ADR provides more control and flexibility.** Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- ≤ **ADR can reduce stress.** ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

- ≤ **Mediation** is an informal, confidential, flexible and non-binding process in the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.
- ≤ Mediation may be appropriate when:
 - ≤ The parties want a non-adversary procedure
 - ≤ The parties have a continuing business or personal relationship
 - ≤ Communication problems are interfering with a resolution
 - ≤ There is an emotional element involved
 - ≤ The parties are interested in an injunction, consent decree, or other form of equitable relief
- ≤ **Neutral evaluation**, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- ≤ The parties are far apart in their view of the law or value of the case
- ≤ The case involves a technical issue in which the evaluator has expertise
- ≤ Case planning assistance would be helpful and would save legal fees and costs
- ≤ The parties are interested in an injunction, consent decree, or other form of equitable relief

-0VER-

- Arbitration is a less formal process than a trial, with no jury. The arbitrator hears the evidence and arguments of the parties, then makes a written decision. The parties can agree to binding or non-binding arbitration. In binding arbitration, the arbitrator's decision is final and completely resolves the case, without the opportunity for appeal. In non-binding arbitration, the arbitrator's decision could resolve the case, without the opportunity for appeal, unless a party timely rejects the arbitrator's decision within 30 days and requests a trial. Private arbitrators are allowed to charge for their time.

Arbitration may be appropriate when:

- The action is for personal injury, property damage, or breach of contract
- Only monetary damages are sought
- Witness testimony, under oath, needs to be evaluated
- An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

Civil Judge ADR allows parties to have a mediation or settlement conference with an experienced judge of the Superior Court. Mediation is an informal, confidential, flexible and non-binding process in which the judge helps the parties to understand the interests of everyone involved, and their practical and legal choices. A settlement conference is an informal process in which the judge meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations. The request for mediation or settlement conference may be made promptly by stipulation (agreement) upon the filing of the Civil complaint and the answer. There is no charge for this service.

Civil Judge ADR may be appropriate when:

- The parties have complex facts to review
- The case involves multiple parties and problems
- The courthouse surroundings would be helpful to the settlement process

Special masters and referees are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

Settlement conferences are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

What kind of disputes can be resolved by ADR?

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; collections; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; fraud; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; sports; trade secret; and wrongful death, among other matters.

Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, information about ADR procedures, or answers to other questions about ADR?

Contact:

Santa Clara County Superior Court
ADR Administrator
408-882-2530

Santa Clara County DRPA Coordinator
408-792-2704

ALTERNATIVE DISPUTE RESOLUTION INFORMATION SHEET/ CIVIL DIVISION

CM-010

ATTORNEY FOR PLAINTIFF OR COUNTER PLAINTIFF
TIM REED, ESQ. #242578
ROBERT DAVID BAKER, INC.
1511 THE ALAMOSA

FOR COURT USE ONLY

JUL 14 08

S. Cao-Mauves
Clerk's Office

SAN JOSE, CA 95126
TELEPHONE 408 292-8555 FAX NO 408 292-0703
ATTORNEY FOR PLAINTIFF ANGELINA SANCHEZ

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
STREET ADDRESS 191 NORTH FIRST STREET
MAILING ADDRESS
CITY AND ZIP CODE SAN JOSE, CA 95113
BRANCH NAME SANTA CLARA COUNTY SUPERIOR COURT

CASE NAME ANGELINA SANCHEZ V. KELLOGG, USA, INC.

CASE NUMBER 1080V117192

JUDGE GLET

<input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)
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Complex Case Designation
 Counter Joinder
 Filed with first appearance by defendant
 (Cal. Rules of Court, rule 1811)

Items 1-5 below must be completed (see instructions on page 2)

1. Check one box below for the case type that best describes this case:

Auto Tort

- Auto (22)
 Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 Product liability (24)
 Medical malpractice (45)
 Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

- Business tort/breach business practice (07)
 Civil rights (38)
 Defamation (13)
 Fraud (16)
 Intellectual property (19)
 Professional negligence (25)
 Other non-PI/PD/WD tort (35)

Employment

- Wrongful termination (36)
 Other employment (15)

Contract

- Breach of contract/warranty (06)
 Collections (09)
 Insurance coverage (18)
 Other contract (37)

Real Property

- Eminent domain/inverse condemnation (14)
 Wrongful eviction (33)
 Other real property (26)

Unlawful Detainer

- Commercial (31)
 Residential (32)
 Drugs (38)

Judicial Review

- Asset forfeiture (05)
 Petition re. arbitration award (11)
 Writ of mandate (02)
 Other judicial review (39)

Provisionally Complex Civil Litigation

(Cal. Rules of Court, rules 1800-1812)

- Antitrust/Trade regulation (03)

- Construction defect (10)

- Mass tort (40)

- Securities litigation (28)

- Environmental/Toxic tort (30)

Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

- Enforcement of judgment (20)

Miscellaneous Civil Complaint

- RICO (27)

- Other complaint (not specified above) (42)

Miscellaneous Civil Petition

- Partnership and corporate governance (21)

- Other petition (not specified above) (43)

2. This case is is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management

- a. Large number of separately represented parties d. Large number of witnesses
 b. Extensive motion practice raising difficult or novel e. Coordination with related actions pending in one or more courts issues that will be time-consuming to resolve in other counties, states, or countries, or in a federal court
 c. Substantial amount of documentary evidence f. Substantial postjudgment judicial supervision

3. Type of remedies sought (check all that apply):

- a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify).

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015).

Date: JULY 14, 2008

TIM REED, ESQ. #242578

SIGNED OR PRINTED NAME

SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF

- NOTICE**
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.
 - File this cover sheet in addition to any cover sheet required by local court rule.
 - If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
 - Unless this is a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers

If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 5 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. You do not need to submit a cover sheet with amended papers. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 201.8(c) and 227 of the California Rules of Court.

To Parties in Complex Cases

In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 1800 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

- Auto (22) Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury
 - Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress
 - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/WD Tort (35)

Employment

- Wrongful Termination (36)
- Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
 - Breach of Rental/Lease
 - Contract (*not unlawful detainer or wrongful eviction*)
 - Contract/Warranty Breach-Seller Plaintiff (*not fraud or negligence*)
 - Negligent Breach of Contract/Warranty
 - Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
 - Collection Case-Seller Plaintiff
 - Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ-Administrative Mandamus
 - Writ-Mandamus on Limited Court Case Matter
 - Writ-Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal-Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rule 1800-1812)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment (*non-domestic relations*)
 - Sister State Judgment
 - Administrative Agency Award (*not unpaid taxes*)
 - Petition/Certification of Entry of Judgment on Unpaid Taxes
 - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (*not specified above*) (42)
- Declaratory Relief Only
- Injunctive Relief Only (*non-harassment*)
- Mechanics Lien
- Other Commercial Complaint Case (*non-tort/non-complex*)
- Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
- Civil Harassment
- Workplace Violence
- Elder/Dependent Adult Abuse
- Election Contest
- Petition for Name Change
- Petition for Relief from Late Claim
- Other Civil Petition

